CONSTITUTIONAL AMENDMENTS

IN THE

COMMONWEALTH OF IOWA

BY

FRANK E. HORACK

(REPRINTED FROM THE IOWA HISTORICAL RECORD)

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PREFACE.

"Constitutional Amendments in the Commonwealth of Iowa" was suggested to me by Dr. Benj. F. Shambaugh as a subject suitable for special investigation in connection with my studies while a candidate for the degree of Master of Arts at the University of Iowa. And it is to Dr. Shambaugh that I am chiefly indebted for references and materials which have considerably lightened the task of research.

In this brief essay it is my purpose to present the general and more important data relative to Constitutional Amendments in Iowa. At the same time the essay will be found to contain some observations on the amending of constitutions in general.

FRANK E. HORACK.

Iowa City, 1899.

CONSTITUTIONAL AMENDMENTS IN THE COMMONWEALTH OF IOWA.

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I.

Introduction: The Significance of Constitutional Amendments.

By the principles of general law, the right of a people to recast their political institutions cannot be denied.[1] In America this truth was definitely formulated as a fundamental political principle as early as 1776 in the Virginia Bill of Rights and in the Declaration of Independence. The Virginia Bill of Rights asserts that "When any government shall be found inadequate or contrary to these its purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[2] But the classical formula of this principle of political change or right of revolution is found in the Declaration of Independence in these words: "That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Revolutionary as all this may be, the principle therein contained has, nevertheless, more than once been confirmed by the Supreme Court of a commonwealth.[3]

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[1] Jameson, Constitutional Conventions, p. 546.

[2] Virginia Bill of Rights, of June 12, 1776, Art. III. See Poore's Charters and Constitutions, Vol. II., p. 1909.

[3] Cf. Wells v. Bain, 75 Pennsylvania St., 39. Stowe, J., Wood's Appeal, 75 Pennsylvania St., 49. Collier v. Ferguson, 24 Alabama, 108.

Constitutions are established by the sovereign people, i. e., the State. And constitutional limitations upon the State are in no sense absolute: they are formal. For "the same power that has decreed them still has the power to alter or abolish them, though this alteration or abolishment must be done in the formal legal way. An unalterable law is a legal impossibility."[1] An unalterable constitution is a political impossibility. This is true, moreover, of a written constitution even though it contains no provision for amendment. Here the power to amend is necessarily implied. Now the fundamental principle here involved is, that since the State is sovereign it cannot be limited or controlled, not even by constitutional law. "Somewhere within its power must lie the legal competence to express a will that is sovereign and therefore without limitation."[2]

In general two methods have been followed in the United States in the amending of constitutions. Constitutions have been amended (1) by the agency of a constituent assembly or a constitutional convention, or (2) by the agency of the legislature. In both cases the amendments have as a rule been ratified by a direct vote of the people.[3] Which of these two methods is the best is a question to be determined largely by their tendency, respectively, to avoid or prevent the great evils

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[1] Willoughby, The Nature of the State, p. 214.

[2] Willoughby, The Nature of the State, p. 219. Cf. also Jameson, Constitutional Conventions, p. 548. The first constitution of Massachusetts contained no provision for amendments. "The doctrine of the Revolution, that governments were founded by the people, and could be amended by them as they should think fit, was erroneously understood to warrant tumultuous assemblages of citizens, without legal authority, to dictate to the government not only its current policy, but amendments of the fundamental law. Shay's Rebellion was the natural outgrowth of such views."

Again, Burgess, in his work on Political Science and Comparative Constitutional Law, Vol. I., Part II., Bk. I., p. 137, declares that the amending clause is the most important part of a constitution.

[3] Cf. Jameson, Constitutional Conventions, p. 550. It must, however, be remembered that there are many exceptions in our history to this general rule Many of the earlier State constitutions were simply promulgated by the State

or dangers of trifling with fundamental and more or less permanent principles of government; namely, "hasty legislation, excessive legislation, and partisan legislation."[1]

In politics the best results are not usually accomplished by extreme measures. Thus the framers of the Constitution of the United States while seeking to avoid the evils of too frequent changes in the fundamental law unquestionably made that instrument too difficult of amendment.

While each of the methods thus far devised for constitutional amendment has its advantages, either one alone may work hardship to the state. Amendment by convention is an expensive and difficult process, and is seldom employed except where a general revision of the constitution is found absolutely necessary. Nor will amendment by convention alone meet the exigencies of progressive society. In the growth of a State new conditions or changed circumstances frequently make necessary certain minor changes in, or additions to, the constitution. These are changes which no convention could possibly anticipate. And yet such slight alterations will hardly warrant the putting into operation of the expensive and cumbersome process of amendment by convention.

Nor will the legislative method alone be found more satisfactory in practice. For this method, being easy and inexpensive, naturally invites the incorporation of partisan and temporary measures into the fundamental law. Thus each political party as it comes into power will proceed to make permanent its political creed by incorporating it into the constitution in the form of amendments.

Now some of the evils arising out of the exclusive use of one or the other of the methods named may undoubtedly be avoided by providing for both methods in the amending clause or article of the constitution. This, however, is by no means

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legislature. Constitutional conventions also have promulgated constitutions, even quite recently, without submitting them to the people for ratification.

[1] Cf. Jameson, Constitutional Conventions, p. 552.

a new idea. It is already embodied in most of our State constitutions. In this way minor changes in the fundamental law are made possible without the expense of a convention. And yet when it is necessary or expedient to make a general revision of the constitution the people have recourse to a convention. Still it is evident that evils will arise even where both methods are provided for.

Thus it appears that the subject of constitutional amendment is one of the large problems of constitutional law for which the best solution has not yet been found. It remains for the students of politics to devise a more perfect method by which to effect constitutional amendments—one difficult enough not only to avoid, but also to prevent hasty legislation, excessive legislation, and partisan legislation, and at the same time easy enough to make possible those changes that are demanded by progressive society. The solution of the problem is not in any sense the object of this essay.

Herein it is proposed simply to state and explain the methods of amendment provided for in the several constitutions of Iowa, with some mention of where these methods have worked satisfactorily and where they have worked evil.

II.

Historical Sketch of the Constitutions of Iowa.

The political division of American territory known as Iowa was originally a part of the so-called Louisiana Purchase. The early history of Iowa, therefore, is in a sense the history of the Province of Louisiana. Explored and settled by the French, this vast and vaguely defined area was ceded to Spain in 1762. Thirty-eight years later it was ceded back to France, under whose dominion it remained for three years when it was sold by Napoleon to the United States.

By an act of Congress, March 26th, 1804, this Louisiana Purchase was divided into two territories—The Territory of Orleans and the District of Louisiana.[1]

Orleans was fully organized into a separate territory, while the District was placed under the jurisdiction of the governor and judges of the Territory of Indiana. But the inhabitants of the District of Louisiana were greatly dissatisfied with the provisions of the act of Congress, and through their representatives assembled in convention at St. Louis, September 29th, 1804, they drew up a violent remonstrance,[2] and earnestly prayed for the repeal of the act. In March of the year next following, Congress provided for the erection of the District of Louisiana into the independent Territory of Louisiana.[3]

An act of Congress approved June 4th, 1812, reorganized the Territory of Louisiana under the name of the Territory of Missouri.[4]

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[1] Cf. Shambaugh's Documentary History of Iowa, Vol. I., p. 19.

[2] American State Papers, Miscellaneous, Vol. I., p. 400.

[3] Cf. Shambaugh's Documentary History of Iowa, Vol. I., p. 27.

[4] Ibid, p. 30.

In 1819 all that part of the Territory of Missouri which lay "south of a line beginning on the Mississippi river at thirty-six degrees north latitude, running thence west to the river St. Francois, thence up the same to thirty-six degrees thirty minutes north latitude and thence west to the western territorial boundary line," was erected into the Territory of Arkansas.[1]

In 1821 Missouri was admitted as a State, but no provisions were made for the remaining territory which lay to the north and west of Missouri. Nor was it provided with any local government whatever until 1834, when "for the purpose of temporary government it was attached to, and made a part of the Territory of Michigan."[2]

The Territory of Wisconsin was established July 4th, 1836. Iowa was included in this territory and remained a part thereof for two years. In 1838 the country west of the Mississippi was erected into the separate Territory of Iowa.[3] In 1844 Iowa sought admission into the Union as a State. But owing to a dispute between Congress and the people of the Territory over the boundaries of the proposed State, Iowa was not admitted until December 28th, 1846.

The Organic Act.

The act of Congress of June 12th, 1838, establishing the Territory of Iowa, constituted the organic law,[4] i. e., the constitution of the Territory of Iowa. This constitution, however, differed from all succeeding ones in that it was imposed upon the people of the Territory by an act of Congress without being in any way submitted to the people for their approval. The first constitution of Iowa did not emanate from the people.

The Constitution of 1844.

The first formal expression of the people of Iowa for com-

[1] U. S. Stat. at Large, Vol. III., p. 493.

[2] Cf. Shambaugh's Documentary History of Iowa, Vol. I., p. 76.

[3] Ibid, p. 102.

[4] U. S. Stat. at Large, Vol. V., p. 235. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 102.

monwealth organization came in July, 1840, through the Legislative Assembly in an act entitled: "An act to provide for the expression of the opinion of the people of the Territory of Iowa as to taking preparatory steps for their admission into the Union."[1] This act called for a vote of the people on the question of a constitutional convention. In August, 1840, the vote was taken. The proposed convention was defeated by a large majority. Two years later the question of convention was again submitted to a vote of the people. The proposition was again defeated by a majority in every county. On February 12th, 1844, the Legislative Assembly again approved an act to submit the question of convention to a vote of the people. The question was voted upon in April, 1844, and this time received a majority in favor of State government of nearly three thousand votes.[2]

Each time that the question of a convention was submitted to a vote, the leading argument against State organization was that, if Iowa were admitted to the Union, the entire support of the new government would fall upon the people of the Territory and thus greatly increase the burden of taxation.

Finally, as stated above, the question of a convention having received a majority of the votes cast in the Territory, delegates were elected to the first constitutional convention, which met at Iowa City, October 7th, 1844. The constitution drafted by this convention, the so-called "Constitution of 1844," was submitted to the people of the Territory in April 1845. Meanwhile Congress had passed an act for the admission of Iowa into the Union.[3] But the boundaries of the State as defined by Congress in this act did not coincide with the boundaries prescribed in the first article of the constitution.[4]

[1] Laws of the Territory of Iowa, 1840, (extra session), Ch. 33, p. 46. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 135.

[2] Cf. Shambaugh's Documentary History of Iowa, Vol. I., pp. 148, 149.

[3] U. S. Stat. at Large, Vol. V., p. 789. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 125.

[4] Constitution of 1844, Art. I. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 150.

Much dissatisfaction was manifested by the people of the Territory with the conditions imposed by Congress. The boundary question became the vital issue in the campaign. Upon it depended in a great measure the acceptance or rejection of the constitution. Thus the disapproval of the boundaries set by Congress led the people to reject the labors of the constitutional convention. But at the summer session of the Legislative Assembly, those most interested in State organization secured the passage of an act re-submitting the constitution "as it came from the hands of the late convention." This act also provided that the ratification of the constitution "shall not be construed as an acceptance of the boundaries fixed by Congress in the late act of admission, and the admission shall not be deemed complete until whatever conditions may be imposed by Congress shall be ratified by the people."[1]

In August, 1845, the constitution was submitted to the people a second time. The boundary question was again made a vital issue. But by this time the matter had become somewhat complicated, or confused to say the least. And so the people of the Territory again rejected the Constitution of 1844. Thus the Constitution of 1844 never became a law.

The Constitution of 1846.

The Legislative Assembly met in regular session in December, 1845. Twice had the calling of a constitutional convention been vetoed by the people. Twice had the constitution framed by the first convention been rejected. Yet there were many who looked and hoped for a speedy admission of the Territory into the Union. The Governor in his message deplored the rejection of the constitution. The assembly was in harmony with him, and soon passed an act (approved January 17th, 1846) which provided for the election of delegates to a convention to form a new constitution. Delegates were elected according to the provisions of the act, and the second

[1] Laws of the Territory of Iowa, 1845, Ch. 13, p. 31. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 180.

constitutional convention met at Iowa City, May 4th, 1846. This convention drafted the "Constitution of 1846,"[1] which was ratified by the people of the Territory, August 3d, 1846, by a majority of 456 votes. On the 4th of August, 1846, the act of Congress defining the boundaries of Iowa was approved by the President.[2] And finally on the 28th day of December, 1846, Iowa was formally "admitted into the Union on an equal footing with the original States."[3]

The Constitution of 1857.

The Constitution of 1846 did not long remain the fundamental law. In January, 1855, an act was approved by the General Assembly submitting to the people a proposition for the calling of a constitutional convention to "revise or amend" the State constitution, i. e., the Constitution of 1846. At the election in August this proposition was sanctioned by a majority of 628 votes.

Article IX., Sec. 1, of the Constitution of 1846 reads: "No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money." This provision aimed to insure the people against the evils of "wild cat" banking which were so common at the time of the adoption of the Constitution of 1846. The effect, however, of such a prohibition was to deprive the people of the benefits of banks without preventing the evils and abuses which pervaded American banking operations. The State was

[1] Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 190.

[2] U. S. Statutes at Large, Vol. IX., p. 52. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 128.

[3] U. S. Statutes at Large, Vol. IX., p. 117. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 130.

flooded with bank notes and paper from the neighboring States. In this anti-bank provision may be seen the cause of the early revision of the Constitution of 1846; for in the debates of the convention of 1857 it is easy to see that the avowed object of revision was to remove this unsatisfactory prohibition.

The manner of amendment also caused much dissatisfaction. It was claimed by the Whigs that the bank issue was a party issue, and that the Democrats had made amendment difficult in order to make the prohibition permanent in the fundamental law.

The convention called "to revise or amend" the Constitution of 1846 met at Iowa City from January 19th to March 5th, 1857. The constitution submitted by this convention, called the "Constitution of 1857,"[1] was ratified by the people of the State in August of the same year. A proposition was made at the same time to strike out the word "white" in the article on the "Right of Suffrage." This proposition, however, was defeated. The Constitution of 1857 went into effect September 3d, 1857.

The Constitution of 1857 is still in force. Nor have the people since its adoption favored the calling of another constitutional convention. The Constitution of 1857 has, however, been amended at four different times. These amendments will be considered in another part of this essay.

The last three amendments to the Federal Constitution were ratified by the General Assembly in 1866, 1868, and 1870 respectively. Broadly construed these amendments may in a sense be viewed as modifications of the Constitution of 1857. This is true in so far as they modified the suffrage and the general status of the government of the State.

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[1] Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 222.

III.

Manner of Amending the Constitutions of Iowa.

Manner of Amending the Organic Act.

The act of Congress of June 12th, 1838, may, and as we have above observed,[1] should be considered as the first constitution of Iowa. In this case an ordinary statute is the fundamental law. Now a constitution thus framed, enacted, and promulgated by a legislative assembly according to the ordinary processes of legislation may undoubtedly be amended, revised, repealed or abolished by the same process. This is strictly in accordance with the well known principle of constitutional law; namely, that no legislature is competent to enact an irrepealable law. We must, therefore, conclude that although the Organic Act of 1838 contained no provision for its own alteration or amendment Congress, and Congress only, could change its provisions.

Manner of Amending the Constitution of 1844.

Although the Constitution of 1844 was rejected by the people its article on amendments is nevertheless interesting in this connection. It reads as follows:

"1. Any amendment or amendments to this constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendments shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be published for three months, previous to the time of making such choice; and, if, in the General Assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall

[1] Page 12.

be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or amendments voting in their favor, such amendment or amendments shall become part of this constitution. When any amendment or amendments to this constitution shall be proposed in pursuance of the foregoing provisions the same shall, at each of the said sessions, be read three several days in each house. The General Assembly shall not propose the same amendments to this constitution oftener than once in six years.

"2. And if at any time, two-thirds of the Senate and House of Representatives shall think it necessary to revise or change this Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than of both branches of the Legislature."

From the above article it will be seen that the Convention which drafted the Constitution of 1844 comprehended both methods of constitutional amendment.[1]

Each has its advantages, but neither one alone is adequate to the exigencies of changing conditions. It is a significant fact that the members of the convention of 1844 recognized this truth and embodied it in the amending clause of the Constitution of 1844.

It is to be noted, furthermore, that a distinction is here made between "amendment" and "revision or change." Each required a separate and distinct procedure. The first could

[1] See above page 8.

be effected by the legislative mode, the latter by a convention only. In the first case the proposition for amendment comes through a majority in each house of the legislature. Now, according to this plan, if in a given instance a particular political party should have a majority in both houses of the legislature, a purely party measure might be made a proposition for amendment. But the next General Assembly is supposed to be elected on the amendatory issue, and if the particular party returns with a majority in both houses this is prima facie evidence that the people favor the proposition for amendment. The measure is then promptly passed by a majority of each house a second time, and submitted to the people for ratification. When so approved and ratified it then becomes a part of the constitution.

In the second place two-thirds of the Senate and House of Representatives may place before the electors the proposition of a convention "to revise or change" the constitution. In case the proposition should receive a majority of the votes cast the legislature was obliged to provide for calling a convention.

Would the conclusions of the convention have been final? Would the legislature have to approve and ratify the product of the labors of such convention? Or would it have been submitted to the electors for adoption and ratification? These are questions upon which the Constitution of 1844 is silent.

Manner of Amending the Constitution of 1846.

The eleventh article of the Constitution of 1846 has for its subject the "Amendments of the Constitution." It reads as follows:

"1. If at any time, the General Assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the General Assembly, in case a majority of the people vote in favor of a convention, said General Assembly shall provide for an election of Delegates to a convention, to be held within six months after the vote of the people in favor thereof."

Here the provisions are brief, providing for but one method of amendment, that is, by a convention. The same procedure applies to both revision and amendment. We are again confronted with the same queries that were raised under the consideration of the second part of the article on amendments in the Constitution of 1844. Did the members of the convention suppose that the act providing for a future convention to revise or amend the constitution would place the same limitations upon that convention that the act providing for the calling of the convention of which they were members placed upon them?[1] Since this question was left for the legislature to settle, the real intention of the framers of the constitution might have been defeated. The unsatisfactory provisions of the amending clause of the Constitution of 1846 was one of the reasons afterwards urged for its revision. The Whigs urged the same argument against the adoption of the constitution itself.[2]

Manner of Amending the Constitution of 1857.

Article X. of the Constitution of 1857 contains three sections on "Amendments to the Constitution." They read as follows:

"Section 1. Any amendment or amendments to this constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next

[1] Article five of the act authorizing the calling of the convention which framed the Constitution of 1846 provided that the convention should publish the results of its labors, and at the next general election submit the same to the qualified electors of the Territory for adoption or rejection. The provisions of this act were only statutory and not fundamental.

[2] See above page 16.

chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

"Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

"Sec. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, 'Shall there be a Convention to revise the Constitution, and amend the same?' shall be decided by the electors, qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention."

A close comparison of section 1 of this article with section 1 of the article on amendments in the Constitution of 1844, reveals a striking identity, even in the wording. The Constitution of 1844, however, has two additional clauses; namely, "When any amendment or amendments to this Constitution shall be proposed in pursuance of the foregoing provisions, the same shall, at each of the said sessions, be read three several days in each house," and "The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years."

In neither of the other constitutions (of 1844 and 1846) do

we find any thing to correspond to the second section of article ten of the Constitution of 1857, i. e., to the clause providing that where two or more amendments are submitted at the same time each shall be voted for or against separately.

The second section of the twelfth article of the Constitution of 1844, provides for "revision or change" by a convention. The eleventh article of the Constitution of 1846 provides for "revision or amendment" by a convention. And lastly, the third section of the tenth article of the Constitution of 1857 provides that a proposition for revision and amendment be submitted to the people every tenth year.[1] In no case is the method of procedure outlined beyond the choosing of the delegates. May the convention refuse to submit the product of its labors to the legislature? May the legislature accept or refuse to submit it to the people? While these are questions which readily suggest themselves, they have never threatened the welfare of the State. For, since 1857, as I have already stated, the people have at no time favored the calling of a constitutional convention. And while four amendments have been made to the constitution since 1857, these have all been passed by the legislative mode. And the General Assembly has pretty well covered the omissions in the constitution as to publication and submission of such proposed amendments by statutory provisions.[2] Amendment is at best a rather slow and difficult process. The amendments to the several constitutions of Iowa will now be considered.

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[1] "The provision of the Constitution of New York, that the people be consulted every twenty years upon the question of calling a constitutional convention, has been reproduced only in Ohio, Maryland and Virginia. The clause of the Michigan constitution, made in imitation, fixed the period at sixteen years, while in Iowa, the periodical popular vote has likewise been adopted, but with an interval of ten years. The plan has been rejected by all the other constitutions. The aim of those who advocate it is to give the people an opportunity to take a direct part in exercising the initiative in constitutional reforms without the intermediate step of an election of representatives who shall decide whether revision shall or shall not be undertaken."—Borgeaud, Adoption and Amendment of Constitutions, p. 182.

[2] Cf. Code of Iowa, §§ 55-58, p. 127.

IV.

Amendments to the Several Constitutions of Iowa.

Amendments to the Organic Act.

Having ascertained the manner in which the organic act could be amended, one is naturally confronted with these questions. Was the organic act ever amended? If so, what were the amendments? What causes led to such amendments? To the consideration of these points I now turn.

In the journal of the House of Representatives of the Territorial legislature can be found many resolutions requesting Congress to amend the organic law. It would be interesting to compare all the amendments that were proposed to the several Iowa constitutions with those that were actually adopted, but the limits of this essay will not permit of such study. Herein I will confine my observations largely to those amendments which were actually adopted.

The first Territorial legislature came into conflict with the Governor over the interpretation of the second section of the organic law as prescribed by Congress. Now this section, among other things, provided that the Governor "shall approve of all laws passed by the Legislative Assembly before they shall take effect." The interpretation of this clause gave rise to bitter and hostile relations between the Governor and the assembly. The Governor interpreted the words: "shall approve of all laws passed by the Legislative Assembly before they shall take effect," as giving to the executive an absolute veto upon all territorial legislation. The Legislative Assembly, however, advanced a different view; namely, the words "shall approve all laws" meant *must* approve all laws passed by the Legislative Assembly. That is, the assembly held that the approval of laws was a ministerial duty in the performance of

which the Governor could exercise no discretion. Nor did the Governor hesitate to use the power of absolute veto which he claimed for himself. From the very beginning of the first session of the Legislative Assembly he proceeded to annul all of the acts of the legislature that did not meet with his personal approval or were not in his judgment clothed in the best language.

A memorial to Congress was quickly drawn praying that body to amend the organic law so as to make legislation possible over the Governor's veto. This memorial reads as follows:

"To the Honorable Senate and House of Representatives of the United States, in Congress assembled.

"Your memorialists, the Council and House of Representatives of the Territory of Iowa, respectfully represent, that in the second section of the Organic Law of the Territory of Iowa, we find that the Governor of the Territory, has an absolute veto on all laws, which may be enacted by the representatives of the people of this Territory.

"Your memorialists would also represent, that a power thus given to an Executive, is, in their opinion, incompatible with the free institutions and government under which it is their pride and boast to live; a law which invests any officer under our general government with such unlimited powers might (when used without due deliberation on the part of an Executive) lead to unpleasant results, and embarrass the operations of the different branches of our territorial government, and create disagreement where none should exist.

"We, your memorialists, would therefore respectfully request, that the Organic Law of this Territory may be so amended that any bill which may be returned to the Council or House of Representatives, by the Governor of this Territory with objections, and his disapproval, can be again taken up and passed by a majority of two-thirds of all members present in each House, and that said passage shall have the effect to make any such law as good and valid as it would have been if approved of by the Executive.

"All of which is respectfully submitted to your honorable body."

Governor Lucas did not heed the memorial, but continued to veto bills and resolutions right and left. The assembly were becoming desperate. On January 4th, 1839, a standing committee on vetoes was appointed in the House of Representatives to examine into the grounds upon which his vetoes were based.[1] In their report[2] the chairman says that in vain have the committee tried to ascertain where the Governor got this unconditional veto power. In their interpretation of the organic law no such power is delegated, nor do they believe it to be there implied. In their opinion it is "imperative and obligatory upon the Governor to approve all laws" passed by the assembly. It is the executive's duty only to advise the assembly and sign the bills passed by it. The committee with seeming plausibility assert that "the Congress of the United States has a restraining and annulling power over the acts of this legislature and it certainly could not have been intended that there should be more than one 'vetoing' power suspended over our heads." The veto power is a despotic privilege; the wishes of the people should be regarded and not the wishes of the federal government or a federal officer.

The struggle between the legislature and the Governor grew more intense. On January 15th, 1839, a resolution was introduced in the House of Representatives to memorialize the President to remove Governor Lucas. The preamble sets forth the reasons for drawing such a resolution, viz., writing notes and explanations upon laws passed by both houses. These notes were relative to the judicial construction of such laws. Such notes and explanations were considered an insult to the legislature, and an unwarrantable encroachment upon the judicial department of the territorial government. Governor Lucas was accused of trying to unite in himself the

[1] Journal of the House, p. 177.

[2] Journal of the House, p. 186.

legislative, executive, and judicial departments. It was therefore,

"Resolved, That Robert Lucas is 'unfit to be the ruler of a free people,' and that a select committee be appointed to prepare and report a memorial to the President of the United States, setting forth the leading facts upon which the Legislative Assembly found and establish their objections to the continuance of Robert Lucas as Governor of this Territory, and praying in strong terms for his immediate removal."[1]

This resolution was passed on January 15th, 1839. The committee appointed made their report[2] in a memorial to President Van Buren setting forth their complaints of the unjust and arbitrary acts of Governor Lucas, and asking for his removal as the only means of establishing present peace and future prosperity in the Territory. This memorial was concurred in by a large majority of both houses and presented to the President: nor was it without effect. On March 3rd, 1839, the President approved two important amendments to the organic law of the Territory. These amendments, covering the points upon which the Governor and the legislature were at variance, helped much to reconcile the two, and were productive of good legislative work thereafter. In his message to the legislature, November 5th, 1839, Governor Lucas expressed his great joy that the duties of the executive in his relation to the assembly were now clearly defined, and hoped that legislation might no longer be impeded by doubtful or double interpretation of the organic law. But the people never forgot his former actions, for after Iowa was admitted into the Union he became a candidate for Governor and was defeated.

The following is the amendment to the organic law which stripped the Governor of his absolute veto:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

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[1] Journal of the House, p. 223.

[2] Ibid, p. 257.

That every bill which shall have passed the Council and House of Representatives of the Territories of Iowa and Wisconsin shall, before it become a law, be presented to the Governor of the Territory; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within three days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly by adjournment prevent its return, in which case it shall not be a law.

"Sec. 2. And be it further enacted, That this act shall not be so construed as to deprive Congress of the right to disapprove of any law passed by the said Legislative Assembly, or in any way to impair or alter the power of Congress over laws passed by said Assembly."[1]

Nor was the Governor's veto power the only source of dissatisfaction. The large appointing power conferred upon him by the organic law gave him too great an influence among office seekers. Even before the legislature had memorialized Congress in regard to the veto power of the Governor, it had presented to Congress a memorial asking that the organic law be so amended as to make the offices of sheriff and justice of the peace elective by the people of the Territory. The reasons for such a request were, that by appointment many individuals who are not the people's choice will be called to office;

[1] United Statues Stat. at Large, Vol. V., p. 356.

that the official intercourse between these officers and the people is so frequent that the utmost confidence should be placed in them by the people; and that under executive appointment improper persons will often be selected because of the ease with which petitions can be gotten up and presented to the executive, etc.

This memorial was answered by an act of Congress approved March 3, 1839, entitled "An act to authorize the election or appointment of certain officers in the Territory of Iowa, and for other purposes." The provisions relating to the subject under discussion read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislative Assembly of the Territory of Iowa shall be, and are hereby, authorized to provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors, within the said Territory, in such way or manner, and at such times and places as to them may seem proper; and after a law shall have been passed by the Legislative Assembly for that purpose, all elections or appointments of the above-named officers thereafter to be had or made shall be in pursuance of such law."[1]

Amendments to the Constitution of 1846.

The Constitution of 1846 met with much opposition even before it was adopted. The small majority of 456 by which it was carried gives some idea of the bitter opposition made to it by the Whigs. The same arguments were urged against it before its adoption[2] as were urged afterwards for the calling of another convention; namely, that the framers had incorporated partisan measures into the constitution and in order to render them permanent had made amendment impossible except by a convention. Convention is an expensive and slow method

[1] U. S. Statutes at Large, Vol. V., p. 357. Reprinted in Shambaugh's Documentary History of Iowa, Vol. I., p. 118.

[2] Cf. Iowa Standard of July 8, 1846 and July 22, 1846.

of amending a constitution; therefore the people resort to calling one only as a last resort.

In an article in the Iowa Standard of July 22nd, 1846, Wm. Penn Clarke says: " * * * * * In order to establish a partisan creed, and render it permanent, even at the expense of the people's prosperity and happiness, this article on Amendments was inserted." The partisan creed here referred to is the absolute prohibition on banks found in Article IX.[1] That it was a partisan creed there can be no doubt, for the period between the adoption of the Constitution of 1846 and the calling of the constitutional convention to amend it, is known in history as "The Democratic Period of State Control."[2] In nearly every General Assembly after the adoption of the Constitution of 1846 until 1855 propositions were made to submit to the people the question of calling a convention to revise the constitution. These propositions were always defeated by the Democrats.

From the printed debates it is clear that the ostensible purpose of the convention which met January 19th, 1857, was to remove the prohibition on banks contained in the Constitution of 1846.

The convention however did not content themselves with removing the obnoxious bank clause, but submitted to the people an entire new draft of the constitution in which there was a number of changes. Many of these are only slight changes in wording, while others are quite important.[3]

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[1] See above p. 15, this essay.

[2] Cf. History and Government of Iowa, by Seerley and Parish, p. 63.

[3] The following are some of the important changes made in the constitution, not in the order of their importance, but in the order of their position in the constitution.

The period of taking the census was extended from every two years to every ten years. Cf. Art. 3, Sec. 33.

It shortened the Governor's term of office to two years. Cf. Art. 4, Sec. 2.

It provided for a Lieutenant Governor who was to be *ex officio* president of the Senate, and to succeed the Governor in case of his death, resignation or disability to serve. Cf. Art. 4, Secs. 3, 17, 18.

One change, however, they hardly dared to incorporate into the instrument lest the products of their labors should be rejected. This proposed change was, therefore, submitted separately. Sec. 14 of Art. XII reads: "At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word 'white' from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection * * *."

All through Iowa's early history there was a general sentiment against negro suffrage,[1] and this proposition was defeated by a very large majority. The revised constitution however was carried by a vote of 40,311 for and 38,681 against.

Amendments to the Constitution of 1857.

The Constitution of 1857 is still in force in Iowa, though it has been amended four times. These amendments have all been passed by the legislative mode, i. e., proposed by the General Assembly and submitted to the people at the general election.

The first amendments proposed to the new constitution were approved of April 2nd, 1866, by the Eleventh General Assem-

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It made the judges of the Supreme Court elective by the people. Art. 5, Sec. 3.

It provided for an Attorney General and District Attorney to be elected by the people. Cf. Art. 5, Secs. 12, 13.

The limitation of State indebtedness was increased. Art. 7, Sec. 2.

A permanent school fund was insured. Art. 7, Sec. 3.

It authorized the General Assembly to organize a State Bank on an actual specie basis, and provided for a general banking law. Cf. Art. 8, Secs. 7, 8.

It organized a State Board of Education. Cf. Art. 9, Sec. 1.

It made amendment possible either through the agency of the legislature, or a convention. The question of a convention being put before the people every ten years. Cf. Art. 10.

It located the Capitol at Des Moines and the State University at Iowa City. Cf. Art. 11, Sec. 8.

Cf. Debates of the convention, comparison of old and new constitutions. Vol. II., p. 1,066, et. seq.

[1] Cf. Shambaugh's monograph on Iowa City, p. 94.

bly and March 31st, 1868, by the twelfth General Assembly. These amendments were as follows:

1st. Strike the word "white" from section 1 of Article II thereof. By this amendment the negro was given the right of suffrage.

2nd. Strike the word "white" from section 33 of Article III thereof.

By this amendment the negroes were enumerated in the census of the state.

3rd. Strike the word "white" from section 34 of Article III thereof:

4th. Strike the word "white" from section 35 of Article III thereof.

By the 3rd and 4th amendments the negro was included in the basis of representation for the election of Senators and Representatives to the General Assembly.

5th. Strike the word "white" from section 1 of Article VI thereof. By this amendment the negro was included in the the State militia. This turn of legislation in favor of the negro was due entirely to the outcome of the civil war, but the negro did not yet have equal rights with the whites in Iowa. The words "Free White" were still to be found in one place in the constitution. Section 4 of Article III still read: "No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white male citizen of the United States * * *." The wording of this section excluded the negro from both houses of the legislature, as section 5 of the same article says that Senators shall possess the qualifications of Representatives as to residence and citizenship.

In 1880 an amendment was passed to "Strike out the words, 'free white' from the third line of section four (4,) of article three (3,) of said constitution, relating to the legislative department." With this amendment the last political inequality between whites and blacks in the State of Iowa was removed.

The Constitution of 1857 was again amended in 1882.

This was the famous prohibitory amendment, which was added as section 26 to Article I and reads as follows:

"Section 26. No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer.

"The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof."

This being a question of much importance a special election was held to present the amendment to the people. The election was held the twenty-seventh day of June, 1882, and 155,436 votes were cast in favor of the amendment, and 125,677 votes were cast against it, and 36 votes were "scattering."[1]

The Supreme Court of the State declared the amendment invalid[2] on the following grounds. The Constitution requires the action of two successive General Assemblies, to be followed by a vote of the people. The 18th General Assembly adopted an amendment, but in the course of its transmission to the 19th General Assembly the tenor and effect of the amendment were changed somewhat, so that the two General Assemblies had not passed upon the same amendment. Thus the will of the majority was defeated. But the Republican party did not lose faith, for they soon enacted the same provision as statute law that they had tried to make fundamental. The history of the prohibitory law is an interesting chapter in the history of Iowa, but does not come within the limits of this essay.

The last amendments so far adopted to the Constitution of 1857 were made fundamental law November 4th, 1884, when ratified by a large majority of the people. These amendments came through the General Assembly in the form of a joint resolution, proposing amendments to the constitution and pro-

[1] Certificate of the Board of State Canvassers, printed from the original manuscript in Shambaugh's Documentary History of Iowa, Vol. I, p. 276.

[2] Case of Koehler v. Lange 60 Iowa R., 543.

viding for their reference and publication, in the following words:

"Be it resolved by the General Assembly of the State of Iowa, That the following amendments to the constitution of the state be and the same are hereby proposed:

"Amendment 1. The general election for the state, district, county and township officers shall be held on the Tuesday next after the first Monday in November.

"Amendment 2. At any regular session of the general assembly the state may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

"Amendment 3. The grand jury may consist of any number of members not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

"Amendment 4. That section 13 of Article 5 of the constitution be stricken therefrom, and the following adopted as such section:

"Section 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a county attorney, who shall be a resident of the county for which he is elected, and who shall hold his office for two years, and until his successor shall have been elected and qualified."

The amendments here noted are not by any means the only ones that have been proposed to the constitution, for scarcely a session of the General Assembly passes, but some amendment or amendments are proposed to the constitution, but our legislatures are conservative and the people are loath to make many changes in the fundamental law.